

Summary of Changes to Surface Mining Reclamation (38-2) Rule March 7, 2003

Changed U. S. Soil Conservation Service to U. S. Natural Resources Conservation Service and removed reference to Handbook throughout rules.

Page 22 – Insert New -3.7.d. A survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least thirty (30) days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.

Page 34 - 3.22.f.5.A. The plan shall contain a description of the measures, which will be taken to replace water supplies that are contaminated, diminished, or interrupted to include:

Page 34 - 3.22.f.5.A.1. Identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water:

Page 34 - 3.22.f.5.A.2. Documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available; and

Page 44 - 3.31.a. To qualify as a Federal, State, County, Municipal or other local government-financed highway or other construction project, the construction must be funded fifty percent (50%) or more by the relevant government agency. Funding at less than fifty percent (50%) may qualify if the construction is undertaken as an approved government reclamation contract, ~~and once~~ Once the exemption is granted, the person doing the construction must have on site available for inspection, the following:

Page 57- 58 - 5.4.b.4. Have the capacity to store 0.125 Acre/ft. of sediment for each acre of disturbed area in the structures watershed; provided, that consideration may be given for reduced storage volume where the preplan and site conditions reflect controlled placement, concurrent reclamation practices, or use of sediment control structures; provided further, that reduced storage volume will be approved only where the operator demonstrates that the effluent limitations of subdivision 14.5.b of this rule will be met. The disturbed area for which the structure is to be designed will include all land affected by previous surface mining operations that are not presently stabilized and all land that will be disturbed throughout the life of the permit. All sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage of the fill and shall include a schedule indicating timing and sequence of construction over the life of the fill.

Page 58 - 5.4.b.11. Control discharge by use of energy dissipaters, riprap channels or other devices to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed using standard engineering procedures. The location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed

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permit area when compared to pre-mining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.

Page 62 – Insert New -5.6 Storm Water Runoff

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operation(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal.

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5.6.d.1.a Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be considered on a case by case basis. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

Page 97 - 8.2.e. In order to promote the enhancement of food, shelter and habitat for wildlife, the practice of creating a timber windrow is encouraged. All unmarketable timber may be used to create a windrow within the permitted area as approved by the Secretary in the mining and reclamation plan. The windrow shall be designed and approved as part of a wildlife planting plan and authorized where the postmining land use includes wildlife habitat. In planning and constructing the windrow, care shall be taken not to impound water or and shall not be placed in such manner or location to block natural drainways. The windrow shall be placed in a uniform and workmanlike parallel line and located so as to improve habitat, food and shelter for wildlife. Areas in and around the windrow shall be seeded after construction with approved, native plant species to provide for erosion control and wildlife enhancement. Construction of the wildlife timber windrow shall take place within the permit area and should be placed immediately below or adjacent to the sediment control system, maintaining a sufficient distance to prevent mixing of spoil material with the selectively placed timber. The placement of spoil material, debris, abandoned equipment, root balls and other undesirable material in the windrow are prohibited.

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Page 97- 9.1.a. Each surface mine operator shall establish on all regraded areas and all other disturbed areas a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of disturbed land, or introduced species that are compatible with the approved postmining land use. Reforestation opportunities must be maximized for all areas not directly associated with the primary approved post mining land use. All revegetation plans must include a map identifying areas to be reforested, planting schedule and stocking rates.

Page 99 - 9.3.d. *second sentence* In evaluating vegetative success, the Secretary shall use a statistically valid sampling technique with a ninety (90) percent statistical confidence interval ~~from the Handbook~~ from the Handbook.

Page 100 - 9.3.f. Where the post mining land use requires legumes and perennial grasses, the operator shall achieve at least a ninety (90) percent ground cover and a productivity level as set for ~~in the Handbook~~ in the Handbook by the Secretary during any two years of the responsibility period except for the first year.

Page 148 - 14.5.h. Added to the end of the first sentence Provided, however, the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived.

Page 160 - 14.14.g. Durable Rock Fills.

14.14.g.1. Fills proposed after January 1, 2004, the ~~The~~ Secretary may only approve the design, construction, and use of a single lift fill with an erosion protection zone or a durable rock fill designed to be reclaimed from the toe upward, both consisting of at least eighty (80) percent durable rock if it can be determined, based on information provided by the operator, that the following conditions exist:

14.14.g.1.A. Examination of core borings and the geologic column show that the overburden consists of durable sandstone, limestone, or other durable material in sufficient thickness and amounts to generate spoil material that is eighty (80) percent or greater durable rock. Where the fill will contain non-cemented clay shale, clay spoil, or other nondurable material, such material must be mixed with the durable rock in a controlled manner such that no more than twenty (20) percent of the fill volume is not durable rock. Tests shall be performed by a Registered Professional Engineer and approved by the Secretary to demonstrate that no more than twenty (20) percent of the fill volume is not durable rock.

14.14.g.1.B. The durable rock shall not consist of acid-producing or toxic-forming material, will not slake in water, and will not degrade to soil material. For purposes of this paragraph only, soil material means material of which at least fifty (50) percent is finer than 0.074 mm, which exhibits plasticity, and which meets the criteria for group symbol ML, CL, OL, MH, CH, or OH, as determined by the Unified Soil Classification System (ASTM D-2487).

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14.14.g.1.C. The toe of the fill will rest on natural slopes no steeper than twenty (20) percent.

14.14.g.2. Design Specifications and Requirements of Single Lift Fills with an Erosion Protection Zone. In addition to the requirements of this subdivision, the design, specifications and requirements of single lift fills with an erosion protection zone shall be in accordance with the following:

14.14.g.2.A. Erosion Protection Zone.

The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

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14.14.g.2.B.1 Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a) The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b) Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

14.14.g.3. Design Specifications and Requirements for Durable Rock Fills designed to be reclaimed from the toe upward. Durable rock fills that are designed to be reclaimed from the toe upward shall comply with all requirements of this subdivision including the following:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

Old 14.14.g.2. becomes 14.14.g.4 and the rest of the 14.14.g. is renumbered accordingly.

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Page 163 - 14.15.a.2. All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, minimize surface water runoff, comply with the storm water runoff plan and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

Page 165 - 14.15.c. Reclaimed Area. For purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, ~~and~~ meets Phase I standards and seeding has occurred.

Page 167 - 14.15.g. Variance – Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible and demonstrate that the variance being sought will comply with section 5.6 of this rule. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

Page 173 - 17.1. *Paragraph 2 inserted* The Secretary shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this section.

Page 189 - 20.6.a. Assessments. ~~Assessment Officer Duties. For the purposes of this section, the assessment officer~~ The Secretary shall not determine the proposed penalty assessment until such time ~~as the Secretary has caused~~ an inspection of the violation ~~to be~~ has been conducted and the findings of that inspection are submitted to the ~~assessment officer~~ Secretary in writing. The Secretary must conduct the inspection of the violation within the first fifteen (15) days after the notice or order was served.

~~The assessment officer may continue conferences, conduct investigations, and interview witnesses as necessary.~~

Page 190 - 20.6.c. ~~The Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer. The reason for reassessment shall be documented in the file by the Secretary.~~ (added before the last sentence)

Page 190 - 20.6.d. Notice of Informal Assessment Conference. The Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written

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request of the person to whom the notice or order was issued, if the request is received within fifteen (15) days from the date the proposed assessment or reassessment is received. Provided, however, the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account. The Secretary shall assign an assessment officer to hold the assessment conference. The time and place of an informal assessment conference shall be posted at the nearest Department of Environmental Protection regional office to the operation, at least five days prior to the conference date. Any person shall have the right to attend and participate in the conference. Any person, other than the operator and Department of Environmental Protection representatives, may submit in writing at the time of the conference a request to present evidence concerning the violation(s) being conferenced. Such request shall be granted by the assessment officer. Should problems arise due to scheduling, the assessment officer may continue the conference to a later time and/or date as the assessment officer deems necessary to honor other scheduled conferences.

Page 190 - 20.6.e. Informal Conference. An informal conference on the assessment or reassessment must be scheduled within 60 days of the receipt of a request, pursuant to paragraph (1) subsection (d) of section 17, of the Act. Failure to hold an informal conference in the time limits specified in this subsection will not be considered as grounds for dismissal of the assessment, unless the operator proves actual prejudice and makes timely objection to the delay. The assessment officer shall consider all relevant information on the violation including information which may be provided pursuant to subdivisions 20.6.b and 20.6.d of this subsection. The assessment officer shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file. Within thirty (30) days after the conference is held the assessment officer shall either:

Page 191 - 20.6.f. An increase or reduction of a proposed civil penalty of more than 25 percent and more than \$500.00 shall not be final and binding until approved by the Secretary.

Remainder of subsection renumbered accordingly.

Page 191 - 20.6.ij. Escrow. If a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall ~~continue to be~~ held in escrow until completion of the conference or judicial review.

Page 201 - 22.4.g.3.A. An impoundment designed without discharge structures shall be capable of storing a minimum of two (2) six (6) hour duration probable maximum storms. A system shall be designed to dewater the impoundment of the probable maximum storm in ten (10) days by pumping or by other means. The requirements of 38-4-25.14 shall also be met. ~~Water shall be removed from the impoundment to its lowest practical level within ten (10) days after the storm event by pumping or by other means if storm water reduces the storage capacity to one probable~~

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~~maximum storm or less. For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.~~

Page 202 - 22.4.i.6. Use of Corrugated Metal Pipes -Corrugated metal pipes, whether coated or uncoated, shall not be used in new or unconstructed refuse impoundments or slurry cells . If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced.

Remainder of subsection renumbered accordingly

Page 210 - 24.3. Water Quality. A coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.

Page 210 - 24.4.Requirements to Release Bonds. Bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended. Provided that there is no evidence of a premature vegetation release.